

## Economic Impact Statement

LSA Document #09-790

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses****(1) Estimate of Number of Small Businesses That Will Be Subject to this Rule:**

[IC 8-1-2-2.2](#) governs landlords who sub-bill tenants in dwelling units. In Indiana, there are landlords renting approximately 794,621 dwelling units. Of those dwelling units, it is unknown how many currently include water and sewage disposal units in their rental rates and will not be affected by this rule. It is also unknown how many of these landlords would be considered a small business.

The purposes of this rule are: (1) to define terms not fully explained by [IC 8-1-2-1.2](#); (2) to clarify certain sub-billing areas not fully explained by [IC 8-1-2-1.2\(b\)](#) through [IC 8-1-2-1.2\(d\)](#); and (3) to clarify the procedure to file the complaints referenced in [IC 8-1-2-1.2](#). As part of clarifying certain sub-billing areas, this rule outlines the proper accounting methods to determine a tenant's portion of water and sewage disposal bills.

The number of additional small businesses that will be subject to this rule depends solely on how many additional landowners become landlords. At this time, the Indiana Utility Regulatory Commission (Commission) cannot reasonably estimate the number of small businesses that will be subject to this rule.

**(2) Estimate of Average Annual Reporting, Record Keeping, and Other Administrative Costs:**

The main goal of the Proposed Rule is to clarify [IC 8-1-2-1.2](#), which provides for fair and accurate billing and a proper complaint procedures when a tenant sub-bills water and sewage disposal service to tenants.

This rule will define terms not fully explained by statute; clarify what should be included in sub-bills, how sub-bills should be calculated, and what billing and sub-billing records should be maintained; and create a procedure to file complaints with the Commission, and for the Commission to receive information and resolve complaints.

The rule is intended to supplement the statute. It is not intended to add unnecessary billing information. The rule limits billing information solely to the information a customer needs to verify the customer is not being charged for the landlords own use and or for more than what the landlord paid the utility for the same services, as prohibited by [IC 8-1-2-1.2\(b\)\(2\)](#) and [IC 8-1-2-1.2\(b\)\(3\)](#), respectively. In addition, the rule requires landlords indicate on the bill that if tenants believe they are billed erroneously, they have a right to file a complaint with the Commission. This is required in [IC 8-1-2-1.2\(d\)\(2\)\(C\)](#) in the lease, the first bill, or in a separate writing. By adding it to every bill, this reminds tenants of their rights and provides current and easily accessible contact information for the Commission should the tenant need our assistance in rectifying billing errors.

The industry has indicated various fiscal impact costs they believe would result from the adoption of this rule. However, under [IC 4-22-2-28](#), considering the "total fiscal impact of the rule" means calculating "the annual economic impact of a rule on all regulated persons after the rule is fully implemented under ([IC 4-22-2-28\(g\)](#))." (emphasis added). The majority of the costs the industry lists are costs associated with [IC 8-1-2-1.2](#), not the proposed administrative rule. The industry states a cost of \$11.47 per rental unit for initial setup costs. [IC 8-1-2-1.2\(c\)\(1\)](#) permits the landlord to recoup "[a] reasonable initial set-up fee." The one-time cost of \$11.47 to a tenant in order to set up billing procedures appears reasonable; therefore, this is a cost that the landlord can completely recoup under statute. The industry also states a cost of \$1.63 per rental unit per month for invoicing.<sup>1</sup> As stated above, the fiscal impact need only consider costs of the rule, not costs that exist because of the underlying statute. [IC 8-1-2-1.2](#) requires landlords to "bill tenants, separately from rent, for the water or sewage disposal service distributed. . ." Therefore, itemized billing is required under statute. Thus, the invoicing costs are a cost of the statute, not the rule. Therefore, the rule itself presents NO cost either to landlords or to tenants.

**(3) Estimate of the Total Economic Impact of this Rule on Small Businesses:**

This rule presents NO cost either to landlords or to tenants. The only costs are those properly attributed to the underlying statute. It is useful as well to remember that compliance with the rule and the statute are completely voluntary. A landlord has no obligation to sub-bill. Instead, the landlord could (1) have all units metered individually so the utility bills them directly; (2) increase lease rates to cover potential utility costs; (3) assume all tenant utility costs as a cost of doing business; or (4) function as a public utility, as long as they pay the public utility fee and follow all other statutory requirements.

**(4) Statement Justifying Any Requirement or Cost Imposed:**

As stated above, while there are costs associated with the underlying statute, this rule presents NO cost either to landlords or to tenants outside of what is statutorily permissible to recoup.

The primary and direct purposes of the rule are twofold. The rule provides tenants a fair and accurate billing and proper complaint procedures. The rule also provides landlords a mechanism to recoup utility costs and avoid the status as a public utility subject to Commission regulation.

In the past, tenants have complained to the Commission's consumer affairs division that landlords are unfairly or inaccurately, or both, billing tenants for these services. This rule should decrease such calls and increase tenant satisfaction by creating a mechanism for fair and accurate billing. The rule also clarifies the process for filing complaints with the Commission's consumer affairs division regarding billing disputes. In the past, the Commission's consumer affairs division has received complaints that when a billing dispute occurred, the landlord would simply shut off the tenants water or sewage disposal, or both, service. As the tenant had only a relationship with the landlord, but no contractual relationship with the utility, the tenant was left with little recourse to restore service. This rule should decrease instances of tenant shutoff by providing a mechanism to resolve billing disputes.

Finally, this rule generally clarifies and provides a process for [IC 8-1-2-1.2](#). If followed properly, [IC 8-1-2-1.2](#) provides a mechanism for landlords to remain outside the definition of a public utility. Failure to do so results in the landlord being considered a public utility subject to Commission regulation. In addition, it would subject the landlord to public utility fees. In 2008, the average annual public utility fees for sewage disposal service and water were \$797 and \$3,485, respectively. If the landlord is considered a public utility and billed for both water and sewage public utility fees, the total annual cost per landlord would be \$4,282.

**(5) Regulatory Flexibility Analysis:**

A lower degree of stringency would not be sufficient. The rule is fairly flexible, providing several sample accounting methods in broad "reasonable allocation" language. It is hard to fathom a less stringent standard, short of permitting landlords to calculate bills however they deem fit.

Again, compliance with the rule and the statute are completely voluntary. A landlord has no obligation to sub-bill. Instead, the landlord could (1) have all units metered individually so the utility bills them directly; (2) increase lease rates to cover potential utility costs; (3) assume all tenant utility costs as a cost of doing business; or (4) function as a public utility, as long as they pay the public utility fee and follow all other statutory requirements.

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<sup>1</sup>The attorney for the industry states this cost is above the \$4 monthly administrative fee the landlord can recoup under [IC 8-1-2-1.2\(c\)\(1\)](#). However, she failed to indicate which fees are included in that \$4 cost. We can only assume she is including the cost to pay a billing company to separate and calculate bills each month.

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