



January 24, 2020

HOUSE BILL No. 1165

DIGEST OF HB 1165 (Updated January 22, 2020 5:54 pm - DI 101)

Citations Affected: IC 8-1.5.

Synopsis: Municipally owned utilities. Makes the following changes to the Indiana Code provision that provides that in the case of property occupied by someone other than the owner, the person occupying the property is responsible for rates, charges, and other fees for utility services (other than sewer services) provided to the property by a municipally owned utility: (1) Specifies that the occupant is responsible for the rates, charges, and fees for utility services if: (A) the municipally owned utility has received the name and contact information of the owner or manager of the property from the occupant, as required under the statute; or (B) the account or other customer or billing records maintained by the utility for the property otherwise indicate that the property is occupied by someone other than the owner. (2) Prohibits a municipally owned utility or a municipal legislative body, as a condition of providing utility services to the property or otherwise, from requiring the property owner to: (A) ensure the creditworthiness of the occupant; or (B) assume: (i) responsibility for payment of any rates, charges, or other fees for utility services rendered to the property; or (ii) joint and several liability with respect to unpaid utility bills invoiced to the occupant; by signing or cosigning certain agreements with the municipality or the municipally owned utility, or by any other means. (3) Provides that if a municipality provides both sewer service and one or more other utility services to the property: (A) all rates, charges, and other fees for the other utility services are payable by the person occupying the property, regardless of whether

(Continued next page)

Effective: Upon passage.

Burton

January 8, 2020, read first time and referred to Committee on Utilities, Energy and Telecommunications.
 January 23, 2020, amended, reported — Do Pass.

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Digest Continued

the municipality combines billing for sewer service and the other utility services; and (B) the municipality shall not attempt to circumvent, through the use of combined billing or by any other means, the liability of the occupant for the payment of all rates, charges, and other fees imposed for the other utility services. (4) Provides that if a property owner aggrieved by a municipality's or a municipally owned utility's violation of these provisions obtains a judgment in an action brought against the municipality or the municipally owned utility, the court shall award the property owner: (A) reasonable attorney's fees, court costs, and other reasonable expenses of litigation; (B) prejudgment and postjudgment interest at a rate of 8%; and (C) other relief that the court determines appropriate.

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January 24, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1165

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, AS AMENDED BY P.L.105-2019,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 8. (a) A municipality owning a utility under
4 this chapter shall furnish reasonably adequate services and facilities.
5 (b) The rates and charges made by a municipality for a service
6 rendered or to be rendered, either directly or in connection therewith,
7 must be nondiscriminatory, reasonable, and just.
8 (c) "Reasonable and just rates and charges for services" means rates
9 and charges that produce sufficient revenue to:
10 (1) pay all the legal and other necessary expenses incident to the
11 operation of the utility, including:
12 (A) maintenance costs;
13 (B) operating charges;
14 (C) upkeep;
15 (D) repairs;

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- 1 (E) depreciation;
- 2 (F) interest charges on bonds or other obligations, including
- 3 leases; and
- 4 (G) costs associated with the acquisition of utility property
- 5 under IC 8-1.5-2;
- 6 (2) provide a sinking fund for the liquidation of bonds or other
- 7 obligations, including leases;
- 8 (3) provide a debt service reserve for bonds or other obligations,
- 9 including leases, in an amount established by the municipality,
- 10 not to exceed the maximum annual debt service on the bonds or
- 11 obligations or the maximum annual lease rentals;
- 12 (4) provide adequate money for working capital;
- 13 (5) provide adequate money for making extensions and
- 14 replacements to the extent not provided for through depreciation
- 15 in subdivision (1); and
- 16 (6) provide money for the payment of any taxes that may be
- 17 assessed against the utility.
- 18 (d) It is the intent of this section that the rates and charges produce
- 19 an income sufficient to maintain the utility property in a sound physical
- 20 and financial condition to render adequate and efficient service. Rates
- 21 and charges too low to meet these requirements are unlawful.
- 22 (e) The board may recommend to the municipal legislative body
- 23 rates and charges sufficient to include a reasonable return on the utility
- 24 plant of the municipality.
- 25 (f) Rates and charges established under this section are subject to
- 26 the approval of:
- 27 (1) the municipal legislative body by ordinance; and
- 28 (2) the commission, in accordance with the procedures set forth
- 29 in IC 8-1-2.
- 30 The commission shall approve rates and charges that are sufficient, in
- 31 addition to the cash revenue requirements set forth in subsection (c), to
- 32 include a reasonable return on the utility plant of the municipality if the
- 33 legislative body so elects.
- 34 (g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,
- 35 the commission shall approve rates and charges sufficient to
- 36 compensate the municipality for taxes that would be due the
- 37 municipality on the utility property were it privately owned. These rates
- 38 and charges in lieu of taxes may be transferred to the municipal general
- 39 fund, if the legislative body so elects.
- 40 (h) The commission shall grant a request that an increase in rates
- 41 and charges not be effective until after the occurrence of a future event
- 42 if the legislative body so requests.



1 (i) A municipality that acquires and operates a utility under
 2 IC 8-1.5-2 by exercising the power of eminent domain may not impose
 3 a special rate, charge, surcharge, or other fee, other than rates and
 4 charges approved under this section or otherwise authorized by law, on
 5 the customers of the utility in order to pay for the costs associated with
 6 acquiring the utility through the exercise of the power of eminent
 7 domain.

8 (j) **Except as provided in subsection (l), this subsection does and**
 9 **subsection (k) do not apply to services rendered by a sewage works**
 10 **that is subject to IC 36-9-23 or to IC 36-9-25. This subsection also does**
 11 **and subsections (k) and (l) do not apply to services rendered by a**
 12 **department of public utilities created by IC 8-1-11.1 or to services**
 13 **rendered by a utility company owned, operated, or held in trust by a**
 14 **consolidated city. This subsection applies to property that is served by**
 15 **a municipally owned utility and that is occupied by someone other than**
 16 **the owner of the property. Upon applying for utility service from a**
 17 **municipally owned utility for property subject to this subsection, the**
 18 **person occupying the property shall provide the municipally owned**
 19 **utility with the name and contact information of the owner or manager**
 20 **of the property. Subject to subsection (k), all rates, charges, and other**
 21 **fees for services rendered by a municipally owned utility to a property**
 22 **that is subject to this subsection are payable by the person occupying**
 23 **the property if either:**

24 **(1) the municipally owned utility has received the name and**
 25 **contact information of the owner or manager of the property**
 26 **from the person occupying the property, as required by this**
 27 **subsection; or**

28 **(2) the account or other customer or billing records maintained by**
 29 **the municipally owned utility for the property otherwise indicate**
 30 **that (1) the property is occupied by someone other than the owner.**
 31 **and (2) the person occupying the property is responsible for**
 32 **paying the rates, charges, and fees assessed for the services**
 33 **rendered by the municipally owned utility with respect to the**
 34 **property.**

35 Rates, charges, and fees assessed for services rendered by a
 36 municipally owned utility with respect to property occupied by
 37 someone other than the owner of the property do not constitute a lien
 38 against the property.

39 (k) **The following apply** with respect to property that is served by
 40 a municipally owned utility and that is occupied by someone other than
 41 the owner of the property: **subsection (j) does not:**

42 (1) **Subsection (j) does not** prohibit a municipal legislative body



1 from imposing any:

2 (A) requirement for a deposit to ensure payment by from the
3 person occupying the property to ensure payment by the
4 person of the rates, charges, and fees assessed for the services
5 rendered by the municipally owned utility with respect to the
6 property; or

7 (B) **subject to subdivision (3)**, other requirement to ensure the
8 creditworthiness of the person occupying the property as the
9 account holder or customer with respect to the property;
10 that the municipal legislative body may lawfully impose. ~~or~~

11 (2) **Subsection (j) does not** abrogate or limit the authority of the
12 owner of a multi-unit building to engage in electrical submetering
13 under IC 8-1-2-36.5, subject to:

14 (A) the owner's qualification to engage in submetering under
15 IC 8-1-2-36.5 and 170 IAC 4-5; and

16 (B) the owner's compliance with the requirements for
17 submetering set forth in IC 8-1-2-36.5 and 170 IAC 4-5.

18 (3) **A municipally owned utility or a municipal legislative body**
19 **may not, as a condition of providing one (1) or more utility**
20 **services to the property or otherwise, require the owner of the**
21 **property to:**

22 (A) **ensure the creditworthiness of the person occupying**
23 **the property, including by requiring the property owner to**
24 **accept responsibility for the payment of a deposit on behalf**
25 **of the person occupying the property; or**

26 (B) **assume:**

27 (i) **responsibility for payment of any rates, charges, or**
28 **other fees for services rendered by the municipally**
29 **owned utility to the property; or**

30 (ii) **joint and several liability with respect to unpaid bills**
31 **invoiced to the person occupying the property;**

32 **by signing an agreement with the municipality or the**
33 **municipally owned utility, by cosigning an agreement**
34 **between the person occupying the property and the**
35 **municipality or the municipally owned utility, or by any**
36 **other means.**

37 (l) **This subsection applies to a municipality that provides:**

38 (1) **sewer service through a sewage works subject to**
39 **IC 36-9-23 or IC 36-9-25; and**

40 (2) **one (1) or more other utility services under this article;**
41 **to a property that is occupied by someone other than the owner of**
42 **the property. All rates, charges, and other fees for utility services**



1 described in subdivision (2) are payable by the person occupying
2 the property if subsection (j)(1) or (j)(2) applies, regardless of
3 whether the municipality combines billing for sewer service and
4 the utility services described in subdivision (2). If the municipality
5 combines billing for sewer service and the utility services described
6 in subdivision (2), the municipality shall clearly identify as separate
7 line items on each customer bill the amounts charged for sewer
8 services and the amounts charged for each utility service described
9 in subdivision (2). Rates, charges, and fees assessed for utility
10 services described in subdivision (2) do not constitute a lien against
11 the property regardless of whether the municipality combines
12 billing for sewer service and the utility services described in
13 subdivision (2). A municipality shall not attempt to circumvent,
14 through the use of combined billing or by any other means, the
15 application of subsection (j) to property subject to this subsection
16 with respect to any utility services described in subdivision (2).

17 (m) If a property owner aggrieved by a municipality's or a
18 municipally owned utility's violation of subsection (j), (k), or (l)
19 obtains a judgment in an action brought against the municipality
20 or the municipally owned utility, the court shall award the
21 property owner:

22 (1) reasonable attorney's fees, court costs, and other
23 reasonable expenses of litigation;

24 (2) prejudgment and postjudgment interest at a rate of eight
25 percent (8%); and

26 (3) other relief that the court determines appropriate.

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1165, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1165 as introduced.)

SOLIDAY

Committee Vote: yeas 11, nays 2.

