

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1187

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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, AS ADDED BY P.L.251-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 61.7. (a) As used in this section, "utility" refers to a wastewater utility that:

- (1) is owned or operated by a political subdivision (as defined in IC 36-1-2-13); and
- (2) 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:

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(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.

(4) The petition is not subject to IC 36-9-23 or IC 36-9-25.

**However, the petition may be subject to IC 8-1.5-6.**

(5) If the petition is heard by a court, the court shall hear the petition de novo.

(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, AS AMENDED BY P.L.251-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 70. In its order upon any investigation made under the provisions of this chapter, ~~or~~ IC 8-1.5-3, **or IC 8-1.5-6**, 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 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 commission public utility fund account described in IC 8-1-6-2.

SECTION 3. IC 8-1-2-86.5 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 86.5: (a) As used in this section, "four (4) mile area" means the area within four (4) miles of a municipality's corporate boundaries:

(b) Except as provided in subsection (c), the commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities:

(c) This subsection applies only to a municipality:

(1) having a population of less than seven thousand five hundred (7,500); and

(2) that, as of January 1, 2007, has adopted an ordinance exercising the power to regulate the furnishing of water to the public granted by IC 36-9-2-14 within a four (4) mile area.

The commission may not determine a territorial dispute within a four (4) mile area unless the territorial dispute concerns a geographic area located in more than one (1) four (4) mile area.

SECTION 4. IC 8-1-13-18.5, AS AMENDED BY P.L.42-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18.5. (a) Except as provided in subsection (i), a corporation organized under this chapter or a corporation organized under IC 23-17 whose membership includes one (1) or more corporations organized under this chapter may withdraw from the jurisdiction of the commission. A corporation organized under this chapter that withdraws from the jurisdiction of the commission must comply with all provisions of this chapter that do not directly concern the commission and must continue to pay the public utility fee required under IC 8-1-6. A member of a corporation that has withdrawn from the commission's jurisdiction shall have reasonable access to the meetings and the minutes of the meetings of the corporation's board of directors, except for executive sessions that concern personnel matters and confidential or proprietary matters that may:

(1) invade the privacy of a member or an employee of the corporation; or

(2) impair the corporation's bargaining, legal, or competitive position;

if the matter is disclosed to the member.

(b) A corporation that proposes to withdraw under this chapter from the jurisdiction of the commission must first obtain the approval of the members.

(c) The board of a corporation that proposes to withdraw under this



chapter from the jurisdiction of the commission must conduct a referendum of the members of the corporation to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(d) A board must send written notice of the board's intent to conduct a referendum to the commission before the board may conduct the referendum.

(e) A referendum may be conducted at an annual or special meeting of the members held under section 8 of this chapter if a quorum is present.

(f) Written notice of a meeting at which a referendum is to be conducted must be sent to every member not less than thirty (30) days before the date of the meeting. The notice must contain the following information:

- (1) The place, date, and hour of the meeting.
- (2) The fact that a referendum will be conducted at the meeting to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.
- (3) The fact that no proxies will be permitted to determine whether the members approve of the removal of the corporation from the jurisdiction of the commission.

(g) A board shall distribute secret ballots to the members present at the meeting. The ballots must be in a form substantially equivalent to the following:

YES. I want the corporation to withdraw from the jurisdiction of the commission.

NO. I want the corporation to remain under the jurisdiction of the commission.

Only those members present in person at the meeting may vote. Each member is entitled to one (1) vote on the question of the corporation's withdrawal from jurisdiction of the commission. If a majority of the members present vote in favor of withdrawing from the jurisdiction of the commission, the withdrawal is effective thirty (30) days after the date of the vote. If less than a majority of the members vote in favor of withdrawing the corporation from jurisdiction of the commission, the corporation is prohibited from conducting another referendum concerning withdrawal for eighteen (18) months following the date of the meeting at which the vote was taken. Parties aggrieved by the conduct of the referendum must file an action in the circuit or superior court with jurisdiction in the county where the corporation has the corporation's principal office to allege noncompliance with this section not more than thirty (30) days after the date of the vote.



(h) If a corporation withdraws from jurisdiction of the commission, the corporation's secretary shall not more than five (5) days after the date of the vote send a verified certification of the vote to the commission affirming that all the requirements of this section were met and include all of the following:

- (1) The total membership of the corporation.
- (2) The total number of members voting in the referendum.
- (3) The actual vote, for and against withdrawal.

(i) If a corporation withdraws from the jurisdiction of the commission, the commission shall continue to exercise jurisdiction over the corporation only as to the following:

- (1) Electric service area assignments under IC 8-1-2.3.
- (2) Certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2, IC 8-1-8.5, or IC 8-1-8.7.
- (3) ~~Water utility disputes under IC 8-1-2-86.5.~~

(j) Whenever two (2) or more corporations organized under this chapter consolidate or merge under section 16 of this chapter, and one (1) but not all of the corporations has withdrawn from the jurisdiction of the commission under this section, the consolidated or merged corporation is under the jurisdiction of the commission until the consolidated or merged corporation withdraws from jurisdiction of the commission under this section, unless the agreement for consolidation or merger approved under section 16 of this chapter includes the withdrawal from the jurisdiction of the commission under this section.

(k) A board of a corporation that has withdrawn from the jurisdiction of the commission under this section must conduct a referendum of the corporation's members to determine whether the corporation should return to the jurisdiction of the commission upon receipt of:

- (1) a petition for a referendum signed by not less than fifteen percent (15%) of the corporation's members; or
- (2) a resolution ordering a referendum adopted by a majority vote of the board of directors of the corporation.

Upon receipt of the petition or adoption of the resolution by the board, the board shall inform the commission of the petition or resolution and shall thereafter conduct a referendum at the next annual meeting of the corporation held under section 8 of this chapter, or if the next annual meeting is more than ninety (90) days after the date the petition was received or resolution for referendum was adopted by the board, then at a special meeting called by the board and held not more than ninety (90) days after receipt of the petition or adoption of the resolution. The



process provided in subsections (d), (e), (f), (g), and (h) shall be followed when conducting a referendum under this subsection, except the form of the ballots must be as follows:

\_\_\_ YES. I want the corporation to return to the jurisdiction of the commission.

\_\_\_ NO. I want the corporation to remain outside the jurisdiction of the commission.

If a corporation returns to the jurisdiction of the commission, the commission shall resume all the jurisdiction it would have if the corporation had not withdrawn, effective thirty (30) days following the date the referendum was conducted. If less than a majority of the members voting at the referendum vote in favor of returning to the jurisdiction of the commission, a referendum on the question presented at the referendum may not be conducted for eighteen (18) months following the date of the vote.

SECTION 5. IC 8-1-17.5-25, AS AMENDED BY P.L.256-2013, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. Notwithstanding any other law, the commission may exercise jurisdiction over a surviving corporation or successor corporation formed under this chapter only to do the following:

(1) Ensure compliance with IC 8-1-2.8 concerning the provision of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(2) Perform the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.

(3) Enforce rules adopted under IC 8-1-29 to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(4) Conduct proceedings under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.



- (5) Perform the commission's duties under IC 8-1-2.6-1.5 or IC 8-1-2-5.
- (6) Issue or maintain certificates of territorial authority for communications service providers under IC 8-1-32.5.
- (7) Perform the commission's duties under IC 8-1-34 to issue and maintain certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.
- (8) Perform the commission's duties under IC 8-1-2.6-13(c)(9) concerning the reporting of information by communications service providers.
- (9) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.
- (10) Perform the commission's duties under IC 8-1-2.3 with respect to assigned service areas for electricity suppliers.
- (11) Issue:
  - (A) certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2;
  - (B) certificates of public convenience and necessity under IC 8-1-8.5; or
  - (C) certificates of public convenience and necessity under IC 8-1-8.7.
- (12) Determine territorial disputes between water utilities under ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 6. IC 8-1-32-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. This chapter does not reduce or supersede the commission's jurisdiction under IC 8-1-2-86 and ~~IC 8-1-2-86.5~~; **IC 8-1.5-6**.

SECTION 7. IC 8-1.5-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 6. Utility Service in Regulated Territories**

**Sec. 1. As used in this chapter, "municipal utility" refers to a municipally owned:**

- (1) water utility;**
- (2) wastewater utility; or**
- (3) combined water and wastewater utility;**

**regardless of whether the municipal utility is under the jurisdiction of the commission for the approval of rates and charges.**

**Sec. 2. As used in this chapter, "regulated territory" means the**



area outside the corporate boundaries of a municipality described in:

- (1) IC 36-9-2-18;
- (2) IC 36-9-2-19; or
- (3) IC 36-9-23-36.

Sec. 3. As used in this chapter, "regulatory ordinance" means an ordinance adopted by a municipality that:

- (1) asserts the exclusive authority of a municipal utility to provide service within a regulated territory; or
- (2) prohibits another utility from providing utility service in the regulated territory.

Sec. 4. As used in this chapter, "utility" means a utility that provides:

- (1) water service;
- (2) wastewater service; or
- (3) combined water and wastewater service;

regardless of whether the utility is under the jurisdiction of the commission for the approval of rates and charges. The term includes a municipal utility.

Sec. 5. As used in this chapter, "wholesale sewage petition" refers to a petition filed under IC 8-1-2-61.7 for review of rates and charges for wholesale sewage service.

Sec. 6. Notwithstanding any other provision in this title or IC 36, the offering or provision of service by a utility in a regulated territory is under the jurisdiction of the commission as set forth in sections 7, 8, 9, and 10 of this chapter.

Sec. 7. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance before January 1, 2013;
- (2) a dispute arises or exists between a utility owned by the municipality and another utility as to which utility provides service to customers that connected to service provided by one (1) of the utilities:
  - (A) after the date on which the regulatory ordinance was adopted; and
  - (B) before March 15, 2014; and
- (3) the utilities are unable to resolve a dispute described in subdivision (2) through mutual agreement.

(b) Not later than October 1, 2014, a utility shall petition the commission for resolution of the dispute. The petition must be in the form and manner prescribed by the commission. Upon the filing of the petition, the commission shall assume immediate and





exclusive jurisdiction over the utilities for purposes of resolving the dispute.

(c) Upon assuming jurisdiction under subsection (b) and after notice and hearing, the commission shall issue an order resolving all issues presented in the petition described in subsection (b), including determining the manner in which the utilities shall provide service to the customers that are the subject of the dispute, in the manner that the commission determines is in the public interest. In making the determination, the commission shall consider the criteria set forth in section 8(g) of this chapter. The commission shall issue the order within three hundred (300) days after the petition described in subsection (b) is filed.

**Sec. 8. (a) This section applies if:**

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
- (2) a utility owned by the municipality files a wholesale sewage petition.

**(b) A municipality may not enforce a regulatory ordinance until all the following conditions are satisfied:**

- (1) There is a final judgment on the wholesale sewage petition that concludes all administrative and judicial proceedings. For purposes of this subdivision, a final judgment includes an order of the commission under subsection (f).
- (2) The commission has issued an order under subsection (f) that resolves all issues included in a petition filed under subsection (d) in a manner that the commission determines is in the public interest.
- (3) The municipality has modified the regulatory ordinance to comply with the order of the commission described in subdivision (2), if necessary.

**(c) A utility may file with the commission a petition alleging that the final judgment of a court on the wholesale sewage petition does not resolve all issues included in the wholesale sewage petition that are related to:**

- (1) the service territory of the municipality; or
- (2) rates and charges for wholesale sewage service.

The commission shall assume immediate and exclusive jurisdiction over the municipal utility upon the filing of the petition for purposes of resolving the remaining issues. After notice and hearing, the commission shall issue an order within three hundred (300) days after the petition is filed resolving all issues presented in the petition in the manner that the commission determines is in the



public interest. In making a determination of the public interest, the commission shall consider the factors set forth in subsection (g). The commission may combine a hearing under this subsection with a hearing under subsection (f) and issue a single order on the combined hearing.

(d) Not later than October 1, 2014, a municipal utility shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

- (1) A description of the service territory established in the regulatory ordinance.
- (2) Proposed rates and charges for the services to be provided in the service territory.
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance or the wholesale sewage petition.
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(e) Upon the filing of a petition described in subsection (d), the commission shall do the following:

- (1) Encourage all utilities listed under subsection (d)(4) to reach a mutual agreement that apportions the provision of service in the regulated territory among the utilities. A mutual agreement described in this subdivision is the preferred method of establishing service territories in a regulated territory. To take effect, a mutual agreement must be approved by the commission in an order issued under subsection (f), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.
- (2) If the utilities are unable to reach a mutual agreement under subdivision (1), the commission shall assume immediate and exclusive jurisdiction over the municipal utility, including the wholesale sewage petition if there is no final judgment from a court on the wholesale sewage petition.

(f) Upon assuming jurisdiction under subsection (e)(2) and after notice and hearing, the commission shall issue an order resolving:

- (1) all issues presented in the petition described in subsection (d), including the enforceability of the regulatory ordinance; and
- (2) any applicable issues presented in the wholesale sewage petition;

in the manner that the commission determines is in the public



interest. The commission shall issue the order within three hundred (300) days after the petition described in subsection (d) is filed.

(g) In making a determination under subsection (f), the commission shall consider the following:

- (1) The ability of another utility to provide service in the regulated territory.
- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the commission's order on present and future economic development in the regulated territory.
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the commission considers necessary.

Sec. 9. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
- (2) a utility owned by the municipality does not, or is not eligible to, file a wholesale sewage petition.

(b) A municipality may not enforce a regulatory ordinance until the commission issues an order under subsection (c). The municipality shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

- (1) A description of the service territory established in the regulatory ordinance.
- (2) Proposed rates and charges for the services to be provided in the service territory.
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance.
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(c) After notice and hearing, the commission shall issue an order resolving all issues presented in the petition described in subsection (b), including the enforceability of the regulatory ordinance in the manner that the commission determines is in the public interest. In making a determination of the public interest, the commission shall consider the factors set forth in section 8(g) of this chapter. The commission shall issue the order within three hundred (300) days after the petition described in subsection (b) is filed.

(d) If the commission does not approve the petition, the municipality may modify and resubmit the petition in the manner



prescribed by the commission. After notice and hearing, the commission shall review the petition as set forth in subsection (c). If the commission does not approve the resubmitted petition, the regulatory ordinance is void.

(e) The municipality may petition the commission to rescind or modify an order issued under subsection (c) not earlier than five (5) years after the date on which the order was issued.

**Sec. 10. (a) This section applies to a dispute, other than a dispute described in section 7, 8, or 9 of this chapter, that:**

- (1) arises between two (2) or more utilities as to which utility will provide utility service in a regulated territory; and
- (2) is not the subject of an action initially filed in a court before January 1, 2014.

A dispute shall be resolved by the commission under this section.

(b) A proceeding under this section may be initiated:

- (1) by a utility that is a party to a dispute described in subsection (a); or
- (2) by the commission on its own initiative.

(c) Throughout a proceeding under this section, the commission shall, where feasible, promote the resolution of the dispute described in subsection (a) through a mutual agreement between the utilities that apportions the provision of utility service in the regulated territory. A mutual agreement described in this subsection is the preferred way of resolving a dispute described in subsection (a). However, to resolve the dispute, a mutual agreement must be approved by the commission in an order issued under subsection (e), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(d) If the utilities are unable to reach a mutual agreement under subsection (c), the commission shall determine the manner in which utilities shall provide service in the regulated territory. In making the determination, the commission shall consider the criteria set forth in section 8(g) of this chapter.

(e) After notice and hearing, the commission shall issue an order:

- (1) approving a mutual agreement under subsection (c); or
- (2) making a final determination under subsection (d).

**Sec. 11. This section applies to a municipality that:**

- (1) after December 31, 2012, adopts a regulatory ordinance that establishes a service territory that is smaller than the regulated territory; and



**(2) either:**

**(A) amends the ordinance described in subdivision (1); or**

**(B) adopts a new ordinance;**

**to establish a service territory that is larger than the service territory described in subdivision (1).**

**Before an ordinance described in subdivision (2) may take effect, the municipality shall submit the ordinance to the commission for approval under section 10 of this chapter.**

**Sec. 12. An order issued by the commission under this chapter is a final order for purposes of IC 8-1-3 and is enforceable in court.**

**Sec. 13. A petition filed under this chapter is not subject to the following:**

**(1) IC 8-1.5-3.**

**(2) IC 36-9-23.**

**(3) IC 36-9-25.**

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



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

