



February 19, 2002

**ENGROSSED
HOUSE BILL No. 1085**

DIGEST OF HB 1085 (Updated February 18, 2002 11:44 AM - DI 101)

Citations Affected: IC 8-1.

Synopsis: Service areas of electricity suppliers. Modifies procedures that must be followed when a municipally owned electric utility seeks to change its assigned service area to include territory that has been annexed by the municipality. Provides that the municipally owned electric utility must pay additional severance damages to the incumbent electricity suppliers in the annexed area based on electricity sold to service accounts established in the annexed area during the five year period beginning on the effective date of the annexation ordinance. Provides that the severance payments must continue for each service account for the five year period beginning on the date the service account is established. Requires the utility regulatory commission (IURC) to determine and enforce payment of severance damages when the parties cannot agree on the amount of the damages. Requires the IURC to approve a change in the boundaries of the assigned service areas of electric utilities when the affected utilities mutually agree to the change, unless the IURC determines after a public hearing that the change would result in certain consequences.

Effective: July 1, 2002.

Smith M, Fry

(SENATE SPONSORS — WEATHERWAX, LANANE)

January 8, 2002, read first time and referred to Committee on Rules and Legislative Procedures.

January 15, 2002, reassigned to Committee on Commerce, Economic Development and Technology.

January 23, 2002, amended, reported — Do Pass.

January 28, 2002, read second time, ordered engrossed. Engrossed.

January 29, 2002, read third time, passed. Yeas 94, nays 1.

SENATE ACTION

February 1, 2002, read first time and referred to Committee on Energy and Economic Development.

February 18, 2002, reported favorably — Do Pass.

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EH 1085—LS 6291/DI 47+



February 19, 2002

Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

ENGROSSED HOUSE BILL No. 1085

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 6. The boundaries of the assigned service areas of
4 electricity suppliers may not be changed except under any one (1) of
5 the following circumstances:

6 (1) If a municipality which owns and operates an electric utility
7 system ~~and furnishes~~ **furnishing** retail electric service to the
8 public annexes ~~an~~ area beyond the assigned service area of its
9 municipally owned electric utility, ~~and the ordinance providing~~
10 ~~for the annexation provides that the annexing city has developed~~
11 ~~and adopted a fiscal plan and has established a definite policy to~~
12 ~~furnish the territory to be annexed within a period of three (3) or~~
13 ~~four (4) years governmental and proprietary services substantially~~
14 ~~equivalent in standard and scope to the governmental and~~
15 ~~proprietary services furnished by the annexing city to other areas~~
16 ~~of the city regardless of topography, patterns of land utilization~~
17 ~~and population density similar to the territory to be annexed; then~~

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1 the municipally owned electric utility may petition the
 2 commission to change the assigned service area of the
 3 municipally owned electric utility to include the annexed area, A
 4 municipally owned electric utility shall exercise its right to
 5 petition the commission to change its assigned service area within
 6 sixty (60) days after annexation becomes final or lose its right
 7 under this subdivision. The commission shall rule on the petition
 8 of the municipally owned electric utility within ninety (90) days
 9 after its filing. If, upon notice and after hearing, the commission
 10 decides that it is in the public convenience and necessity for the
 11 municipally owned electric utility to render service to the annexed
 12 area, it shall order the assigned service area of the municipally
 13 owned electric utility to be changed to include the annexed area
 14 with the right to serve and immediate possession to the
 15 municipally owned electric utility. The commission order is
 16 enforceable in court pending an appeal of that order. An appellant
 17 from a court order enforcing a commission order under this
 18 subsection shall not be entitled to a stay of the court order
 19 pending appeal. In determining public convenience and necessity,
 20 the commission shall give consideration to all relevant matters,
 21 including but not limited to the following:

- 22 (A) Preference of owners, occupiers, and consumers in the
 23 annexed area.
- 24 (B) Ability of the municipally owned electric utility to render
 25 service after the assignment of service area.
- 26 (C) Other utility services to be supplied in the annexed area by
 27 the municipality.
- 28 (D) Proximity and capability of the service repair facilities of
 29 the electricity suppliers involved.
- 30 (E) Preference of local government officials.

31 However, this subdivision does not apply to incorporations,
 32 consolidations, mergers, or annexations that are under
 33 IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or
 34 IC 36-4-3-4.1, or that are not contiguous under
 35 IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an
 36 assigned service area is ordered by the commission, all of the
 37 electric utility property of another electricity supplier which is
 38 devoted to retail electric service within such additional
 39 assigned service area shall be acquired at its then reproduction
 40 cost new depreciated value; in addition, the acquiring
 41 electricity supplier shall pay severance damages limited to, if
 42 applicable, the distribution and substation facilities dedicated



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1 to and located within the annexed area or relocated by reason
 2 of the annexation; or an amount equal to two and one-half (2
 3 1/2) times the previous year's gross electric sales from the
 4 newly assigned service area, whichever is greater. If the parties
 5 do not agree on the amount the acquiring electricity supplier
 6 is to pay, then the commission shall determine said amount
 7 and order its payment in accordance with this subsection:
 8 according to the following procedures:

9 (A) The municipally owned electric utility shall file its
 10 petition with the commission not later than sixty (60) days
 11 after the annexation becomes effective. The petition must
 12 include a certified copy of the annexation ordinance, which
 13 serves as conclusive evidence that the area has been
 14 lawfully annexed and is part of the municipality. After the
 15 filing of a petition under this subdivision, the commission
 16 shall promptly enter an order changing the assigned
 17 service area facet maps of the municipally owned electric
 18 utility and incumbent electricity suppliers to include the
 19 annexed area within the assigned service area of the
 20 municipally owned electric utility and giving the right to
 21 serve and immediate possession to the municipally owned
 22 electric utility. The commission order is enforceable in
 23 court pending an appeal of that order. An appellant from
 24 a court order enforcing a commission order under this
 25 subdivision is not entitled to a stay of the court order
 26 pending appeal. However, this subdivision does not apply
 27 to incorporations, consolidations, mergers, or annexations
 28 that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b),
 29 IC 36-4-3-4(h), or IC 36-4-3-4.1 or that are not contiguous
 30 under IC 36-4-3-13(b) or IC 36-4-3-13(c).

31 (B) Not later than thirty (30) days after filing a petition
 32 under this subdivision, the municipally owned electric
 33 utility shall determine for each affected incumbent
 34 electricity supplier and pay to that supplier an amount not
 35 less than the value of all the electric utility property of the
 36 incumbent electricity supplier that is devoted to furnishing
 37 retail electric service within the additional assigned service
 38 area at its then reproduction cost new depreciated value.
 39 In addition, the municipally owned electric utility shall pay
 40 the incumbent electricity supplier severance damages in an
 41 amount equal to:

42 (i) the value of the incumbent electricity supplier's

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1 distribution and substation facilities dedicated to and
2 located within the annexed area or relocated by reason
3 of the annexation or an amount equal to two and
4 one-half (2 1/2) times the incumbent electricity supplier's
5 gross revenues from electricity sales in the annexed area
6 during the twelve (12) month period immediately
7 preceding the date the annexation ordinance became
8 effective, whichever is greater; plus

9 (ii) if additional permanent service locations or service
10 accounts are established in the annexed area during the
11 five (5) year period beginning on the effective date of the
12 annexation ordinance, one-tenth of one cent (\$0.001) for
13 each kilowatt hour of electricity sold to each of those
14 permanent service locations or service accounts for sales
15 that occur during a five (5) year period beginning on the
16 date each service location or service account is
17 established, up to a maximum of one hundred seventy
18 thousand (170,000) kilowatt hours per service account or
19 service location for each monthly billing period.

20 However, the municipally owned electric utility is not
21 required to pay severance damages under item (ii) if, at the
22 time each annual payment otherwise would accrue, it is
23 purchasing all of its requirements for electric power and
24 energy, except for generation directly provided by the
25 municipally owned electric utility or by a customer, from
26 the incumbent electricity supplier. Severance damages
27 must be paid not later than thirty (30) days after the end of
28 each calendar year in which severance damages have
29 accrued. The municipally owned electric utility and
30 incumbent electricity suppliers shall cooperate to calculate
31 the amount of any severance damages and shall furnish to
32 each other all information and records reasonably
33 necessary for the determination and verification of
34 severance damages. If the municipally owned electric
35 utility and incumbent electricity suppliers cannot agree on
36 the amount of severance damages the municipally owned
37 electric utility is to pay, the commission shall determine the
38 amount and order payment in accordance with this clause.
39 Not later than twenty (20) days after making a payment,
40 the municipally owned electric utility shall certify to the
41 commission and to any affected incumbent electricity
42 supplier that it has paid the amounts required under this

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1 clause.

2 (C) If the municipally owned electric utility fails to make
3 a payment under clause (B), an affected incumbent
4 electricity supplier may, not later than sixty (60) days after
5 the payment is due and after giving the municipally owned
6 electric utility reasonable notice of and an opportunity to
7 cure the defect, file with the commission a petition alleging
8 that a payment due under clause (B) has not been made. If
9 the commission finds after notice and hearing that any
10 payments owed to the incumbent electricity supplier have
11 not been timely and fully paid, the commission shall order
12 the municipally owned electric utility to pay:

13 (i) the delinquent payments by a date determined by the
14 commission;

15 (ii) accrued interest at the rate set forth in
16 IC 24-4.6-1-102; and

17 (iii) the incumbent electricity supplier's costs of filing
18 and prosecuting a petition under this clause.

19 If the commission finds against the incumbent electricity
20 supplier, it shall order the incumbent electricity supplier
21 to pay the costs incurred by the municipally owned electric
22 utility in defending against the incumbent electricity
23 supplier's petition.

24 (D) A certified copy of a final commission order that:

25 (i) determines and orders the payment of severance
26 damages under clause (B); or

27 (ii) orders the payment of delinquent payments, interest,
28 and costs under clause (C);

29 may be filed with the clerk of the circuit or superior court
30 of any county in which part or all of the annexed area is
31 located. A commission order that is filed in a court under
32 this clause may be enforced and executed in the same
33 manner as if it were a final judgment of that court.

34 (2) Upon mutual agreement of the affected electricity suppliers
35 and approval of the commission. If notice of a verified request
36 for a change of boundary lines by mutual agreement under
37 this subdivision is published in a newspaper of general
38 circulation in every county in which the boundary lines are
39 located and an affected electricity customer does not request
40 a hearing within twenty (20) days of the last date of
41 publication, the commission may approve the change without
42 a hearing. The commission shall approve a boundary line

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change under this subdivision unless the commission finds, after a public hearing, that the change would cause:

- (A) duplication of electric utility facilities;**
- (B) waste of materials or resources; or**
- (C) uneconomic, inefficient, or inadequate electric service to the public.**

(3) In the case where a landowner owns a single tract of land ~~which that~~ is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers ~~which~~ are housed in a single structure or ~~which~~ constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1085, 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 1085 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Energy and Economic Development, to which was referred House Bill No. 1085, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1085 as printed January 24, 2002.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 9, Nays 0.

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