

Adopted      Rejected

# COMMITTEE REPORT

**YES:            8**  
**NO:             0**

**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:*

- 1            Delete everything after the enacting clause and insert the following:
- 2            SECTION 1. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999,
- 3            SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4            JULY 1, 2002]: Sec. 6. The boundaries of the assigned service areas of
- 5            electricity suppliers may not be changed except under any one (1) of
- 6            the following circumstances:
- 7            (1) If a municipality which owns and operates an electric utility
- 8            system ~~and furnishes~~ **furnishing** retail electric service to the
- 9            public annexes ~~an~~ area beyond the assigned service area of its
- 10           municipally owned electric utility, ~~and the ordinance providing~~
- 11           ~~for the annexation provides that the annexing city has developed~~
- 12           ~~and adopted a fiscal plan and has established a definite policy to~~
- 13           ~~furnish the territory to be annexed within a period of three (3) or~~

1 four (4) years governmental and proprietary services substantially  
 2 equivalent in standard and scope to the governmental and  
 3 proprietary services furnished by the annexing city to other areas  
 4 of the city regardless of topography; patterns of land utilization  
 5 and population density similar to the territory to be annexed; then  
 6 the municipally owned electric utility may petition the  
 7 commission to change the assigned service area of the  
 8 municipally owned electric utility to include the annexed area, A  
 9 municipally owned electric utility shall exercise its right to  
 10 petition the commission to change its assigned service area within  
 11 sixty (60) days after annexation becomes final or lose its right  
 12 under this subdivision. The commission shall rule on the petition  
 13 of the municipally owned electric utility within ninety (90) days  
 14 after its filing. If, upon notice and after hearing, the commission  
 15 decides that it is in the public convenience and necessity for the  
 16 municipally owned electric utility to render service to the annexed  
 17 area; it shall order the assigned service area of the municipally  
 18 owned electric utility to be changed to include the annexed area  
 19 with the right to serve and immediate possession to the  
 20 municipally owned electric utility. The commission order is  
 21 enforceable in court pending an appeal of that order. An appellant  
 22 from a court order enforcing a commission order under this  
 23 subsection shall not be entitled to a stay of the court order  
 24 pending appeal. In determining public convenience and necessity,  
 25 the commission shall give consideration to all relevant matters;  
 26 including but not limited to the following:

27 (A) Preference of owners, occupiers, and consumers in the  
 28 annexed area.

29 (B) Ability of the municipally owned electric utility to render  
 30 service after the assignment of service area.

31 (C) Other utility services to be supplied in the annexed area by  
 32 the municipality.

33 (D) Proximity and capability of the service repair facilities of  
 34 the electricity suppliers involved.

35 (E) Preference of local government officials.

36 However, this subdivision does not apply to incorporations;  
 37 consolidations; mergers; or annexations that are under  
 38 IC 36-4-3-4(a)(3); IC 36-4-3-4(b); IC 36-4-3-4(h); or

1 IC 36-4-3-4.1, or that are not contiguous under  
2 IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an  
3 assigned service area is ordered by the commission, all of the  
4 electric utility property of another electricity supplier which is  
5 devoted to retail electric service within such additional  
6 assigned service area shall be acquired at its then reproduction  
7 cost new depreciated value; in addition, the acquiring  
8 electricity supplier shall pay severance damages limited to, if  
9 applicable, the distribution and substation facilities dedicated  
10 to and located within the annexed area or relocated by reason  
11 of the annexation, or an amount equal to two and one-half (2  
12 1/2) times the previous year's gross electric sales from the  
13 newly assigned service area, whichever is greater. If the parties  
14 do not agree on the amount the acquiring electricity supplier  
15 is to pay, then the commission shall determine said amount  
16 and order its payment in accordance with this subsection:  
17 **according to the following procedures:**

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

1 under IC 36-4-3-13(b) or IC 36-4-3-13(c).

2 (B) Not later than thirty (30) days after filing a petition  
3 under this subdivision, the municipally owned electric  
4 utility shall determine for each affected incumbent  
5 electricity supplier and pay to that supplier an amount not  
6 less than the value of all the electric utility property of the  
7 incumbent electricity supplier that is devoted to furnishing  
8 retail electric service within the additional assigned service  
9 area at its then reproduction cost new depreciated value.  
10 In addition, the municipally owned electric utility shall pay  
11 the incumbent electricity supplier severance damages in an  
12 amount equal to:

13 (i) the value of the incumbent electricity supplier's  
14 distribution and substation facilities dedicated to and  
15 located within the annexed area or relocated by reason  
16 of the annexation or an amount equal to two and  
17 one-half (2 1/2) times the incumbent electricity supplier's  
18 gross revenues from electricity sales in the annexed area  
19 during the twelve (12) month period immediately  
20 preceding the date the annexation ordinance became  
21 effective, whichever is greater; plus

22 (ii) if additional permanent service locations or service  
23 accounts are established in the annexed area during the  
24 five (5) year period beginning on the effective date of the  
25 annexation ordinance, one-tenth of one cent (\$0.001) for  
26 each kilowatt hour of electricity sold to each of those  
27 permanent service locations or service accounts for sales  
28 that occur during a five (5) year period beginning on the  
29 date each service location or service account is  
30 established, up to a maximum of one hundred seventy  
31 thousand (170,000) kilowatt hours per service account or  
32 service location for each monthly billing period.

33 However, the municipally owned electric utility is not  
34 required to pay severance damages under item (ii) if, at the  
35 time each annual payment otherwise would accrue, it is  
36 purchasing all of its requirements for electric power and  
37 energy, except for generation directly provided by the  
38 municipally owned electric utility or by a customer, from

1 the incumbent electricity supplier. Severance damages  
2 must be paid not later than thirty (30) days after the end of  
3 each calendar year in which severance damages have  
4 accrued. The municipally owned electric utility and  
5 incumbent electricity suppliers shall cooperate to calculate  
6 the amount of any severance damages and shall furnish to  
7 each other all information and records reasonably  
8 necessary for the determination and verification of  
9 severance damages. If the municipally owned electric  
10 utility and incumbent electricity suppliers cannot agree on  
11 the amount of severance damages the municipally owned  
12 electric utility is to pay, the commission shall determine the  
13 amount and order payment in accordance with this clause.  
14 Not later than twenty (20) days after making a payment,  
15 the municipally owned electric utility shall certify to the  
16 commission and to any affected incumbent electricity  
17 supplier that it has paid the amounts required under this  
18 clause.

19 (C) If the municipally owned electric utility fails to make  
20 a payment under clause (B), an affected incumbent  
21 electricity supplier may, not later than sixty (60) days after  
22 the payment is due and after giving the municipally owned  
23 electric utility reasonable notice of and an opportunity to  
24 cure the defect, file with the commission a petition alleging  
25 that a payment due under clause (B) has not been made. If  
26 the commission finds after notice and hearing that any  
27 payments owed to the incumbent electricity supplier have  
28 not been timely and fully paid, the commission shall order  
29 the municipally owned electric utility to pay:

- 30 (i) the delinquent payments by a date determined by the  
31 commission;
- 32 (ii) accrued interest at the rate set forth in  
33 IC 24-4.6-1-102; and
- 34 (iii) the incumbent electricity supplier's costs of filing  
35 and prosecuting a petition under this clause.

36 If the commission finds against the incumbent electricity  
37 supplier, it shall order the incumbent electricity supplier  
38 to pay the costs incurred by the municipally owned electric

- 1 utility in defending against the incumbent electricity  
 2 supplier's petition.
- 3 (D) A certified copy of a final commission order that:
- 4 (i) determines and orders the payment of severance  
 5 damages under clause (B); or
- 6 (ii) orders the payment of delinquent payments, interest,  
 7 and costs under clause (C);
- 8 may be filed with the clerk of the circuit or superior court  
 9 of any county in which part or all of the annexed area is  
 10 located. A commission order that is filed in a court under  
 11 this clause may be enforced and executed in the same  
 12 manner as if it were a final judgment of that court.
- 13 (2) Upon mutual agreement of the affected electricity suppliers  
 14 and approval of the commission. **If notice of a verified request**  
 15 **for a change of boundary lines by mutual agreement under**  
 16 **this subdivision is published in a newspaper of general**  
 17 **circulation in every county in which the boundary lines are**  
 18 **located and an affected electricity customer does not request**  
 19 **a hearing within twenty (20) days of the last date of**  
 20 **publication, the commission may approve the change without**  
 21 **a hearing. The commission shall approve a boundary line**  
 22 **change under this subdivision unless the commission finds,**  
 23 **after a public hearing, that the change would cause:**
- 24 (A) duplication of electric utility facilities;
- 25 (B) waste of materials or resources; or
- 26 (C) uneconomic, inefficient, or inadequate electric service  
 27 to the public.
- 28 (3) In the case where a landowner owns a single tract of land  
 29 **which that** is intersected by the boundary lines of two (2) or more  
 30 assigned service areas, and retail electric service can best be  
 31 supplied by only one (1) electricity supplier, or in the case where  
 32 a customer or customers **which** are housed in a single structure or  
 33 **which** constitute a single governmental, industrial, or institutional  
 34 operation, and the electricity suppliers involved are unable to  
 35 agree which shall furnish the electric service, any of the electricity  
 36 suppliers may submit the matter to the commission for its  
 37 determination based upon public convenience and necessity. If,  
 38 after notice and hearing, the commission determines that one (1)

- 1 or more electricity suppliers are to supply the required retail
- 2 electric service and the boundaries of an assigned service area are
- 3 to be changed, the assigned service area maps of the electricity
- 4 suppliers shall be changed to reflect the new boundaries.
- 5 Renumber all SECTIONS consecutively.  
(Reference is to HB 1085 as introduced.)

**and when so amended that said bill do pass.**

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Representative Fry